

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**Case
19-CA-228486Date Filed
10-2-18**INSTRUCTIONS:**

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT	
a. Name of Employer KBOO Community Radio	b. Tel. No. (503) 231-8032
	c. Cell No.
	f. Fax No.
d. Address (Street, city, state, and ZIP code) 20 SE 8th Ave OR Portland 97214-9712	e. Employer Representative Delphine Criscenzo Station Manager
	g. e-Mail delphinecriscenzo@kboo.org
	h. Number of workers employed 11
i. Type of Establishment (factory, mine, wholesaler, etc.) Others	j. Identify principal product or service Nonprofit that supports a community radio platform
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 5 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) --See additional page--	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) (b) (6), (b) (7)(C) Title: (b) (6), (b) (7)(C) Communications Workers of America Local 7901	
4a. Address (Street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-Mail (b) (6), (b) (7)(C)
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) AFL-CIO	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By (b) (6), (b) (7)(C) (signature of representative or person making charge)	Title: (b) (6), (b) (7)(C) (Print/type name and title or office, if any)
Address (b) (6), (b) (7)(C)	Tel. No. (b) (6), (b) (7)(C)
	Office, if any, Cell No.
	Fax No.
	e-Mail (b) (6), (b) (7)(C)
	10/2/2018 14:35:25 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(a)(5)

Within the previous six months, the Employer failed and refused to bargain in good faith with the union as the collective bargaining representative of its employees by failing to furnish information requested by the union.

Date of request	Employer representative	List items requested	Date refused
9/7/14	(b) (6), (b) (7)(C)	Complete RFI	9/22/18

CELESTE JONES
PRESIDENT



P.O. Box 68471
Portland, OR 97268

CLINT GOODWIN
EXECUTIVE VICE PRESIDENT

Phone (503) 238-6666
Fax (503) 238-6965

Official Request for Information

Date: 9/7/18

To: (b) (6), (b) (7)(C), KBOO (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C), CWA Local 7901 (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

In connection with the investigation (b) (6), (b) (7)(C) and to assist the Union in performing and enforcing the collective bargaining agreement, the Union requests that the employer provide the following information.

1. Please provide (b) (6), (b) (7)(C) complete personnel file.
2. Please identify the specific reason(s) the member was investigated and terminated.
3. Please identify the specific rule, standard or Code of Conduct provision which was violated by the employee, and explain how such provision or rule was violated.
4. For the previous question, please identify the date on which the employee was covered on the specific provision or rule (b) (6), (b) (7)(C) are accused of violating and provide all documentation demonstrating that (b) (6), (b) (7)(C) were covered on that topic at that time. If no such documentation exists, please provide factual explanation as to why.
5. Please provide a copy of any documents given to the grievant concerning (b) (6), (b) (7)(C) discipline. If such documents have already been provided, please state so.
6. Please provide a copy of any documents given to the employee during any investigatory meetings.
7. Please provide all the names of other people investigated in the circumstances that led to the discipline of the employee, the documents used during the investigation, and all notes taken during the investigation.
8. Please identify every person involved in the decision to discipline the grievant and if it was a group or team decision provide the positions of each person on the team in to regard of what their recommendation was, along with notes and documents from that meeting.
9. Please identify the date and time of each and every meeting during which disciplinary action was discussed between KBOO personnel and the grievant. Please provide the name of every person in attendance at each such meeting;
10. Please provide copies of all notes and emails written by supervisors, managers or station personnel during any and all investigatory or disciplinary meetings. If no such notes were taken at any such meetings, please state that fact and provide an explanation as to why notes were not taken at that meeting.
11. Please provide all correspondences, including emails and texts, between the (b) (6), (b) (7)(C) identified as (b) (6), (b) (7)(C) and KBOO management.

Please provide this information to the union by **9/14/18**. If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items, which the Union will accept without prejudice to its position that it is entitled to all documents and information sought in this request. This letter is submitted without prejudice to the Union's right to file subsequent requests. If you have any questions or concerns feel free to contact (b) (6), (b) (7)(C), or the Union Local at 503-238-6666.

Sincerely,

(b) (6), (b) (7)(C)

c: CWA Local 7901

Management Acknowledgement Receipt

Date: _____

Signature: _____ Print Name: _____



8. KBOO objects to this request to the extent that it seeks privileged information. KBOO will provide non-privileged documents, and identifies that (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) were the decision makers pertaining to the (b) (6), (b) (7)(C) discipline. The decision was unanimous.

9. This request is confusing. Are you asking the dates and times of the meetings when management met with (b) (6), (b) (7)(C) to discuss discipline? Please clarify.

10. KBOO objects to this request to the extent that it seeks privileged information. KBOO shall provide non-privileged documents. KBOO already provided a copy of the original email management received from (b) (6), (b) (7)(C).

11. KBOO objects to this request to the extent that it seeks privileged information.



JOSEPH J. HADDAD

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November 26, 2018

J. Dwight Tom
Field Attorney
National Labor Relations Board
Subregion 36
Green-Wyatt Federal Building
1220 SW 3rd Ave., Ste. 605
Portland, OR 97214

Via Electronic Mail and First-Class Certified Mail

**RE: KBOO Position Statement
KBOO Community Radio; Case 19-CA-228486**

Dear J. Dwight Tom:

This fact and position statement is in response to the unfair labor practices charge filed by (b) (6), (b) (7)(C)”), for Communication Workers of America Local 7901 (“Local 7901”), against KBOO Community Radio (KBOO). (b) (6), (b) (7)(C) alleges that KBOO is in violation of the National Labor Relations Act (the “Act”), Section 8(a), subsections (1) and (5), for refusing to submit a complete response to Local 7901’s Request for Information.

I. FACTUAL BACKGROUND

This matter is straightforward: The information KBOO withheld from (b) (6), (b) (7)(C) Request for Information (RFI) is protected by the attorney-client privilege and/or the work product doctrine. Nonetheless, in order to provide a satisfactory response to this charge and to demonstrate KBOO’s pattern of good faith cooperation with Local 7901, some history of KBOO’s interactions with (b) (6), (b) (7)(C) is warranted.

A. Employer-KBOO & Jurisdiction

KBOO Community Radio is a non-profit, non-retail employer powered by the following mission statement: “KBOO embodies equitable social change, shares knowledge, and fosters



creativity by delivering locally rooted and diverse music, culture, news, and opinions, with a commitment to the voices of oppressed and underserved communities.”

Through fundraising events, memberships, and grants, KBOO’s gross annual revenue exceeds \$1,000,000.00. KBOO may be engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act to the extent that it receives contributions from 548 out-of-state members and is regulated by the Federal Communications Commission. KBOO’s employees are represented for purposes of collective bargaining by Local 7901, a labor organization within the meaning of Section 2(5) of the Act.

B. Employee (b) (6), (b) (7)(C) & Events Leading To ULP

(b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) was hired by KBOO on (b) (6), (b) (7)(C) as an (b) (6), (b) (7)(C). On March 10, 2017, (b) (6), (b) (7)(C) was accused of sexual harassment by (b) (6), (b) (7)(C). At the time, (b) (6), (b) (7)(C) was KBOO’s (b) (6), (b) (7)(C). KBOO conducted an investigation into the matter and, due to conflicting reports among witnesses, ultimately found the facts of the complaint inconclusive. Nonetheless, based on information that surfaced during the investigation related to (b) (6), (b) (7)(C) unwelcome behaviors toward (b) (6), (b) (7)(C), KBOO informed (b) (6), (b) (7)(C) that “(b) (6), (b) (7)(C) are in a position of authority as (b) (6), (b) (7)(C) and should be very careful how (b) (6), (b) (7)(C) build relationships with (b) (6), (b) (7)(C), especially those who volunteer under (b) (6), (b) (7)(C) supervision (which also includes some staff members).” Evidence of this discussion is attached hereto as Exhibit A.

A little more than a year later, on April 21, 2018, long-time KBOO (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) reported (b) (6), (b) (7)(C) romantic involvement and subsequent fallout with (b) (6), (b) (7)(C) to KBOO (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) wrote: (b) (6), (b) (7)(C), refusal to reach some sort of détente has created a state of permanent tension between us. For the sake of my mental health, I can no longer (b) (6), (b) (7)(C) in such a toxic environment.” This email is attached as Exhibit B. Please note that (b) (6), (b) (7)(C) is not the (b) (6), (b) (7)(C) who reported unwelcome behaviors during the (b) (6), (b) (7)(C) investigation.

Meanwhile, (b) (6), (b) (7)(C) was repeatedly missing (b) (6), (b) (7)(C) bi-weekly check-ins with (b) (6), (b) (7)(C), pursuant to which (b) (6), (b) (7)(C) drafted a disciplinary write-up for insubordination, to be placed in (b) (6), (b) (7)(C) file. The write-up is attached hereto as Exhibit C.

Due to prior reports of (b) (6), (b) (7)(C) sexual conduct in the workplace and due to the internal strife wrought by (b) (6), (b) (7)(C) allegation of sexual harassment, counsel was informed of (b) (6), (b) (7)(C) report and was brought in to conduct interviews of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).



(b) (6), (b) (7)(C) interview was held (b) (6), (b) (7)(C) 2018, and was attended by (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and counsel. Once the purpose of the meeting was addressed but prior to questioning, (b) (6), (b) (7)(C) requested (b) (6), (b) (7)(C) email (Ex. B). Counsel refused to give (b) (6), (b) (7)(C) the email on-the-spot, and informed (b) (6), (b) (7)(C) we can go through formal processes after the meeting.¹ Counsel left after the investigatory segment of the meeting and (b) (6), (b) (7)(C) presented (b) (6), (b) (7)(C) with the write-up for unrelated insubordination.

C. (b) (6), (b) (7)(C) Pattern Of Bad Faith Bargaining

On August 6, 2018, (b) (6), (b) (7)(C) emailed (b) (6), (b) (7)(C) regarding the refusal to hand over (b) (6), (b) (7)(C) email upon request and signaled (b) (6), (b) (7)(C) intent to file a ULP charge with the NLRB and Unfair Discipline Grievance with the Union if (b) (6), (b) (7)(C) did not hear from (b) (6), (b) (7)(C) by 5pm the following day regarding the Union's interest in settling the matters. (b) (6), (b) (7)(C) email is attached hereto as Exhibit D.

When they spoke on August 7, 2018, (b) (6), (b) (7)(C) informed (b) (6), (b) (7)(C) that if (b) (6), (b) (7)(C) removed the disciplinary write-up from (b) (6), (b) (7)(C) file, (b) (6), (b) (7)(C) would not file the ULP charge with the Board.² (b) (6), (b) (7)(C) followed up with (b) (6), (b) (7)(C) via email on August 8, 2018, writing: "I will not be removing the write up from (b) (6), (b) (7)(C) file. I am attaching the email that you requested at the meeting." This chain of correspondences, including (b) (6), (b) (7)(C) reply, is attached as Exhibit E.

As promised, (b) (6), (b) (7)(C) filed a formal grievance on (b) (6), (b) (7)(C) 2018, arguing that the write-up violates Article 10 of the CBA.

Based on the outcome of the investigation into (b) (6), (b) (7)(C) complaint, which succeeded a number of complaints regarding (b) (6), (b) (7)(C) behavior in (b) (6), (b) (7)(C) supervisory capacity, (b) (6), (b) (7)(C) were terminated on (b) (6), (b) (7)(C) 2018. In an email citing (b) (6), (b) (7)(C) termination, (b) (6), (b) (7)(C) withdrew the grievance on (b) (6), (b) (7)(C) 2018, attached as Exhibit F.

D. ULP Charge

On (b) (6), (b) (7)(C) 2018, (b) (6), (b) (7)(C) filed a grievance on (b) (6), (b) (7)(C) behalf, this time alleging that (b) (6), (b) (7)(C) employment was terminated without just cause on (b) (6), (b) (7)(C) 2018, in violation of Article 10 of the CBA. In tandem with Grievance (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) filed a Request for Information and advised: "If any part of this request is denied or if any material is unavailable, please state so in writing and provide the remaining items."

¹ (b) (6), (b) (7)(C) has a recording of this exchange.

² Again, the subject matter of the write-up (failure to attend required bi-weekly check-ins) and the ULP charge (refusal to instantly hand over (b) (6), (b) (7)(C) complaint), are unrelated.



On September 10, 2018, (b) (6), (b) (7)(C) signaled (b) (6), (b) (7)(C) receipt of the grievance and request, and pursuant to the CBA, asked (b) (6), (b) (7)(C) when (b) (6), (b) (7)(C) would be available to discuss the grievance. (b) (6), (b) (7)(C) replied: "The Union will need the information requested in the RFI before we would be able to set up an effective meeting." This exchange is attached as Exhibit G.

On September 22, 2018, KBOO furnished responsive documents, and stated that it was withholding privileged documents in response to Requests 7, 8, 10, and 11, and sought further clarification with respect to Requests 4 and 9.³

On October 2, 2018, (b) (6), (b) (7)(C) filed the ULP charge against KBOO for "refusing" to respond to (b) (6), (b) (7)(C) RFI.

II. POSITION

KBOO has legitimate affirmative defenses to the production of certain requested information but remains open to discussing additional disclosures, including finding other avenues to get (b) (6), (b) (7)(C) the information (b) (6), (b) (7)(C) seeks.

KBOO has complied with its general obligation to "to provide information that is needed by the bargaining representative for the proper performance of its duties," including "information in furtherance of, or which would allow the union to decide whether to process a grievance."⁴ *NLRB v. Acme Industrial Co.*, 385 US 432 (1967), *Bickerstaff Clay Products*, 266 NLRB 983 (1983).

The attorney-client privilege constitutes a legitimate explanation to preclude the furnishing of attorney-client communications. *BP Exploration (Alaska), Inc.*, 337 NLRB 887, 889 (2002). The work-product privilege protects those documents prepared by a party or its representative in anticipation of litigation. *Central Telephone Co. of Texas*, 343 NLRB 987, 988 (2004).

The discussions surrounding (b) (6), (b) (7)(C) behavior and possible termination involved extensive guidance by counsel. Therefore the attorney-client privilege applies to those qualifying communications and the work product doctrine applies to those materials prepared in anticipation of litigation.

KBOO responded to Requests 7, 8, and 10 to the extent that it could – it provided the names of every individual interviewed which provided context for KBOO's decision to terminate

³ The responses and related documents are contained within Section 1 of this evidence package.

⁴ Grievance (b) (6), (b) (7)(C), alleging (b) (6), (b) (7)(C) was terminated without just cause, is currently advancing to Step 2 per the CBA.



(b) (6), (b) (7)(C) and the names of those making the decision. The communications between KBOO's leadership and its counsel regarding the need for an investigation were withheld from this response, as were notes taken in preparation for, during, and after the interviews.

In *Central Telephone*, the Board concluded that in order to overcome the work product protection, "the Union had the burden of showing that it had a substantial need for the notes and that it could not obtain equivalent information without undue hardship." *Id.* at 990. The Union in *Central Telephone* and in this matter did not make such a showing. The documents in that case remained protected, as they do here.

(b) (6), (b) (7)(C) notes fall under work-product protection, but in keeping with KBOO's cooperative standards, they are attached hereto as Exhibit H and without waiver of any privilege. With regard to Request 11, counsel was in communication with KBOO supervisors and (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) complaint – those communications are attached as Exhibit I.

Further, KBOO is under no obligation to respond to a vague or ambiguous request for information so as not to veer outside of the bounds of relevant disclosures. "[A]n employer must seek clarification of a request it believes is ambiguous or overbroad or comply with the request to the extent it includes relevant information." *Sho-Me Power Electric Cooperative*, 360 NLRB No. 53 (2014). KBOO asked for clarification for Requests 4 and 9. Despite (b) (6), (b) (7)(C) failure to respond, the information predicted is provided in Exhibit J.⁵

Finally, the canon of NLRB decisions that find that employer's have engaged in unfair labor practices are informed by a set of facts whereby the employer *repeatedly refuses to furnish information* after the Union addresses issues of relevance or hardship or the employer relies on unsubstantiated defenses to turning over documents. *Sho-Me Power Electric Cooperative*, 360 NLRB No. 53 (2014); *L.I.F. Industries a/k/a Long Island Fire Proof Door*, 366 NLRB No. 4 (2018); *Southern California Gas Company*, 344 NLRB No. 8 (2005), et. al. Here, KBOO provided (b) (6), (b) (7)(C) with unprotected information and in haste to meet (b) (6), (b) (7)(C) deadlines.⁶

KBOO's response to the RFI does not constitute an unfair labor practice. KBOO furnished responsive, unprotected information with the expectation it would complete additional disclosures. KBOO remains committed to upholding the mutual obligation to bargain collectively with Local 7901.

Please let us know how else we may assist with your investigation.

⁵ Regarding Request 4, there is no documentation specifically outlining that (b) (6), (b) (7)(C) was subject to KBOO's policies during (b) (6), (b) (7)(C) employment, please make the inference based on (b) (6), (b) (7)(C) personnel file, the existence of KBOO policies, and the employee-employer relationship.

⁶ (b) (6), (b) (7)(C) demanded a response to the RFI within 7 days of receipt.



Regards,

/s/ Joseph J. Haddad

Joseph J. Haddad
Cara L. Defilippis
Attorneys for KBOO

GRIEVANCE REPORT

UNION LOCAL NUMBER: 7901		UNION CASE NUMBER: (b) (6), (b) (7)(C)	
GRIEVANCE: DISCIPLINE X OTHER		BUSINESS UNIT: KBOO	
DATE OF OCCURRENCE: (b) (6), (b) (7)(C)-18			
GRIEVANT: filed by (b) (6), (b) (7)(C) on behalf of (b) (6), (b) (7)(C)	SS #	Date of Hire: (b) (6), (b) (7)(C)	

STATEMENT OF GRIEVANCE/ARTICLE OR SECTION VIOLATED:

KBOO terminated the employment of (b) (6), (b) (7)(C) without just cause on (b) (6), (b) (7)(C)-18.

Article(s) violated: Article 10 Section 1 and all other relevant articles.

UNION RESOLUTION:

That (b) (6), (b) (7)(C) be reinstated to (b) (6), (b) (7)(C) position with full back pay and benefits effective (b) (6), (b) (7)(C)-18. The letter of termination, as well as any copies be immediately rescinded. That any and all documentation related to this termination be removed from the member's personnel file, and that the grievant be made whole in every way.

SIGNED-UNION REP	PRINT NAME (b) (6), (b) (7)(C)	DATE (b) (6), (b) (7)(C)/18	PHONE # (b) (6), (b) (7)(C)
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COMPANY DISPOSITION-STEP ONE DATE MEETING HELD

COMPANY DISPOSITION-STEP ONE		DATE MEETING HELD	
SIGNED-COMPANY REP	PRINT NAME	DATE	PHONE #

UNION:	ACCEPTS	REJECTS	APPEALS	INTENDS TO ARBITRATE (DISCIPLINE CASES)
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UNION:	ACCEPTS	REJECTS	APPEALS	INTENDS TO ARBITRATE (DISCIPLINE CASES)
SIGNED-UNION REP			PRINT NAME	DATE
				PHONE #

From: [Dietz, Jessica](#)
To: [Kennedy, Kristy](#)
Subject: FW: Withdrawal of ULP Charge 19-CA-228486 (KBOO)
Date: Thursday, December 13, 2018 12:28:57 PM

(b) (5)



-----Original Message-----

From: (b) (6), (b) (7)(C)
Sent: Wednesday, December 12, 2018 10:11 PM
To: Tom, Dwight <Dwight.Tom@nlrb.gov>
Subject: Withdrawal of ULP Charge 19-CA-228486

Hello Dwight,

Myself and the leadership of CWA Local 7901 have been in communication with the management of KBOO and they have furnished the information we requested and agreed to move forward with the grievance procedure.

I sincerely appreciate your work navigating this process with me, and the additional clarity as to the Union's right to information that this process has provided. Since the grounds for the information denial is now moot, and to recognize the cooperation from management, our Union would like to officially withdraw the charge and consider this matter settled.

Sincerely,

(b) (6), (b) (7)(C)
CWA Local 7901 (b) (6), (b) (7)(C)



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 36
Green-Wyatt Federal Building
1220 SW 3rd Avenue, Suite 605
Portland, OR 97204-2170

Agency Website: www.nlr.gov
Telephone: (503)326-3085
Fax: (503)326-5387

December 13, 2018

Cara Defilippis, Attorney
Joseph Haddad, Attorney
JJH Law PC
514 NW 11th Ave., Ste 201
Portland, OR 97217


Re: KBOO Community Radio
Case 19-CA-228486

Dear Ms. Defilippis and Mr. Haddad:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

RONALD K. HOOKS
Regional Director

By: 

JESSICA DIETZ
Officer in Charge

cc: Delphine Criscenzo, Station Manager
KBOO Community Radio
20 SE 8th Ave.
Portland, OR 97214-9712

(b) (6), (b) (7)(C)

CWA Local 7901

(b) (6), (b) (7)(C)